

No. 83-607

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In The
Supreme Court of the United States

October Term, 1983

STATE OF IDAHO,

Petitioner,

VS.

DAVID ALLEN BRADLEY,

Respondent.

**BRIEF IN OPPOSITION TO PETITION FOR
A WRIT OF CERTIORARI TO THE
IDAHO SUPREME COURT**

McDEVITT, McDEVITT & MEYERS

By M. J. MEYERS

7th & Lander

Post Office Box 4747

Pocatello, Idaho 83201

Telephone (208) 233-4121

Attorneys for Respondent

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Respondent, DAVID ALLEN BRADLEY, respectfully prays that this Court deny the Petition for a Writ of Certiorari to review the Judgment and Opinion of the Idaho Supreme Court entered in this case on September 1, 1983.

OPINIONS BELOW

The Opinion of the Idaho Supreme Court may be found in Petitioner's Appendix at Pages 1a - 12a.

RESPONDENT'S STATEMENT OF THE CASE

Respondent is dissatisfied with the Petitioner's Statement of the Case due to its inaccuracies and omissions. These omissions give an argumentative content not justified by the facts.

In the interest of clarity and fairness, Respondent shall restate in simple form the facts material to the issues in the Petition.

Officer Ed Rankin, a specialized narcotics officer of the State of Idaho, became aware that the Respondent was wanted in the State of Oregon for the felony traffic offense of driving while his license was suspended. His information came from a teletype message on January 1, 1981. Eight (8) days later, Officer Rankin and a second officer, Kim Pieper, went to Respondent's apartment for the stated purpose, as they would later contend, of determining whether he was the David Bradley who was wanted in Oregon. The officers did not obtain an Idaho Arrest Warrant, nor did they obtain a copy of the Oregon Warrant. All they possessed was the copy of the aforesaid teletype message.

Officer Rankin knocked on Bradley's door and identified himself as a police officer. On conflicting evidence

the Trial Court found that the officers thereafter entered Bradley's apartment without written or oral consent.

Both Respondent, Dave Bradley, and a witness in his apartment at the time have testified at the Suppression Hearing that Respondent stated to the officers that he would come outside and talk to them. These individuals also testified that the narcotics officers pushed their way past Bradley and into the apartment where the arrest was effectuated.

The officers at the same hearing, however, testified that Respondent backed away and stepped inside from the door, allowing the officers to enter the premises. Officer Pieper also testified that one of the reasons of going to the apartment was because they [the officers] had reason to believe that Respondent was engaged in drug-related activities.

The Respondent was charged with possession of a controlled substance with intent to deliver. That charge was based upon controlled substances found inside the apartment by the officers. According to the Idaho officers, Oregon law enforcement personnel thereafter refused to extradite Mr. Bradley.

Thereafter, the Trial Court, upon the basis that the initial entry in Respondent's apartment was illegal, suppressed the evidence seized. The Idaho criminal charge remains pending.

Petitioner is correct in its Statement of the Course of Proceedings thereafter.

REASONS FOR DENYING THE WRIT

I.

Petitioner Has Not Complied With The Jurisdictional Prerequisites of 28 USC § 1257(3).

By its specific terms, 28 USC § 1257(3) applies only to Final Judgment or Decrees rendered by the highest Court of a State. Petitioner itself admits at page 2 of its Petition that a Petition for Rehearing was filed with the Idaho Supreme Court on September 21, 1983. That Petition has not been acted upon to date. Until the rehearing is granted or denied, the Opinion of the Idaho Supreme Court has not become final.

Further, Petitioner appealed to the Idaho Supreme Court upon a Memorandum Decision of the Idaho District Court which suppressed certain evidence. (Petitioners Appendix B, pp. 13a - 20a). There has been no trial in this case. There has been no Order of Dismissal of the charge now pending against the Respondent entered in the District Court or the Idaho Supreme Court. The Idaho Supreme Court only upheld the suppression of evidence and did not dismiss the charges.

In *Urie v. Thompson*, 337 U. S. 163, 69 S. Ct. 1018, 93 L. Ed. 1282, this Court held that a State Supreme Court Decision which merely remanded a case back for trial and not for a dismissal was not reviewable.

It cannot be said that until a dismissal of this case has taken place that a final Judgment of the highest court has occurred. While it is speculative to state that additional federal constitutional errors may or may not occur, it is also the policy to avoid a piecemeal determination of such errors. Only after a full determination of this case

has been made or a dismissal entered can the matter be said to be a final Judgment.

II.

The Decision Of The Idaho Supreme Court Is Consistent With Prior United States Supreme Court Decisions And Is Based Upon Independent State Grounds.

The Petitioner would leap from a teletype knowledge of an Oregon Bench Warrant which was never produced to the Trial court to the all-encompassing assertion that knowledge of an out-of-state Warrant is sufficient to invade the sanctity of a home. Petitioner would leap to a conclusion that the arrest on the Oregon traffic Warrant with a mere pretext to gain forcible entry to the Respondent's residence in hopes of obtaining evidence of a drug-related activity even when the information they had posed doubt as to whether the offense was extraditable is lawful.

Indeed, Petitioner contends that Idaho peace officers may lawfully enter a person's dwelling without his consent, having opportunity to make the arrest outside the premises and in the absence of exigent circumstances for the purpose of making an arrest on the basis of mere knowledge of an outstanding felony warrant from another State.

Such a contention is directly contrary to the decision previously rendered in this Court in *Payton v. New York*, 445 US 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371 (1980).

That case held unconstitutional a New York Statute which authorized police officers to enter private residences without Warrants, and if necessary, with force, to make a routine felony arrest.

The Petitioner would have this court decide the validity of an out-of-state Warrant in Idaho. The question of the validity of an out-of-state Warrant in Idaho is one for the Idaho Supreme Court. *People v. Wolgemuth*, 370 N. E. 2d 1067, 69 Ill. 2d 154, 13 Ill. Dec. 40 (1977); *People v. Coto*, 611 P. 2d 969 (Colo. 1980).

In its decision rendered herein, the Idaho Court held that a Warrant from another State has no force nor validity outside the boundaries of that State. Therefore, it logically would follow that there is no substantial federal question presented to this Court for decision.

The contention that this instant case presents a conflict with *Payton v. New York*, *supra*, is not valid. Arrests for felony charges based upon probable cause can and still will be made within the State of Idaho. However, an Idaho Arrest Warrant will be necessary in the absence of exigent circumstances when officers determine to enter a home.

The Petitioner would urge that this Decision is in conflict with the decision of another State Court of last resort, citing *People v. Wolgemuth*, *supra*. The continued viability of *People v. Wolgemuth* is suspect. Its decision was made prior to the decision in *Payton v. New York*, *supra*.

The Oregon Bench Warrant at most provided probable cause to effectuate an arrest. While probable cause may justify a warrantless arrest, it will not justify a warrantless entry into anyone's home in the absence of exigent circumstances. *People v. Coto*, *supra*; *Payton v. New York*, *supra*.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari to review the Judgment and Opinion of the Idaho Supreme Court should be denied.

DATED this 7th day of December, 1983.

Respectfully submitted,

McDEVITT, McDEVITT & MEYERS

By M. J. MEYERS

7th & Lander

Post Office Box 4747

Pocatello, Idaho 83201

Telephone (208) 233-4121

Attorneys for Respondent